

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

PEGGY ROUCKA)	
Claimant)	
VS.)	
)	
ALDI, INC.)	Docket Nos. 214,326 &
Respondent)	214,327
AND)	
)	
TRAVELERS INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Both claimant and respondent appeal from the Award of Administrative Law Judge Robert H. Foerschler dated November 9, 1998. In the Award, the Administrative Law Judge found claimant entitled to a 49 percent work disability based upon an average weekly wage of \$737.95.

APPEARANCES

Claimant appeared by her attorney, Michael A. Preston of Overland Park, Kansas. Respondent and its insurance carrier appeared by their attorney, Gregory D. Worth of Lenexa, Kansas. There were no other appearances.

RECORD AND STIPULATIONS

The record and stipulations as set forth in the Award of the Administrative Law Judge are adopted by the Appeals Board.

ISSUES

What is the nature and extent of claimant's injury and/or disability?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire evidentiary record filed herein, the Appeals Board makes the following findings of fact and conclusions of law:

The Appeals Board finds that the Award of the Administrative Law Judge should be affirmed. The Appeals Board agrees with the Administrative Law Judge's analysis of the evidence as set forth in the Award. Furthermore, the Appeals Board concludes the Award sets out findings of fact and conclusions of law in some detail that are accurate and supported by the record. It is not necessary to repeat those findings and conclusions in this order. Therefore, the Appeals Board adopts the Administrative Law Judge's findings and conclusions as its own as if specifically set forth herein.

The Administrative Law Judge found claimant to have suffered a wage loss of 46 percent based upon an imputed wage of \$10 per hour. The Appeals Board agrees with this conclusion, but believes additional explanation is required. K.S.A. 44-510e requires consideration of the difference between the average weekly wage the worker was earning at the time of the injury and the average weekly wage the worker is earning after the injury. Here, the Administrative Law Judge imputed a wage to claimant above that which claimant was actually earning. The respondent argued that claimant violated the policies set forth in Copeland v. Johnson Group, Inc., 24 Kan. App. 2d 306, 944 P.2d 179 (1997), in that claimant failed to make a good faith effort to obtain post-injury employment. In Copeland, the Court of Appeals held that, if a claimant, post-injury, does not put forth a good faith effort to obtain employment, then the trier of facts is obligated to impute a wage based upon the evidence in the record as to the claimant's wage earning ability. Here, the claimant applied for only fourteen jobs over a 20-month period, which the Appeals Board agrees was not a good faith effort. In addition, respondent offered claimant job placement assistance through Travelers, and claimant, even though having difficulty finding a job, rejected this offer. Based on these factors, the Appeals Board finds a wage should be imputed.

Ronald Combs, rehabilitation specialist with Intracorp, provided evidence that claimant had the ability to earn between \$342 and \$504 per week. Therefore, the Appeals Board affirms the Administrative Law Judge's finding that claimant suffered a 46 percent wage loss, based upon an imputed wage of \$400 per week.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Robert H. Foerschler dated November 9, 1998, should be, and is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of June 1999.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Michael A. Preston, Overland Park, KS
Gregory D. Worth, Lenexa, KS
Robert H. Foerschler, Administrative Law Judge
Philip S. Harness, Director